

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, FEBRUARY 18, 2004**

UNAPPROVED DRAFT
Completed 3/1/ 2004

PRESENT: John R. Byers, Mount Vernon District
Frank de la Fe, Hunter Mill District
Janet R. Hall, Mason District
Suzanne F. Harsel, Braddock District
Nancy Hopkins, Dranesville District
Ronald W. Koch, Sully District
Kenneth Lawrence, Providence District
Rodney L. Lusk, Lee District
Peter F. Murphy, Jr., Springfield District
Laurie Frost Wilson, Commissioner At-Large

ABSENT: Walter L. Alcorn, Commissioner At-Large
Suzanne F. Harsel, Braddock District

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The meeting was called to order at 8:24 p.m. by Chairman Peter F. Murphy, Jr.

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COMMISSION MATTERS

Commissioner Hall announced that the Policy and Procedures Committee had met tonight to review the proposed Zoning Ordinance Amendment Work Program for 2004 and the proposed Residential Parking Zoning Ordinance Amendment. She noted that the Committee would reconvene on Thursday, February 19, 2004, at 7:15 p.m. in the Board Conference Room, to vote on these matters.

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Chairman Murphy announced that there would also be an Environment Committee meeting on Thursday, February 19, 2004, at 7:30 p.m., in the Board Conference Room.

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Chairman Murphy noted that the Planning Commission would not meet on Wednesday, March 25, 2004.

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Commissioner Lawrence MOVED THAT SEA 2002-PR-040, FAIRFAX PLAZA COMPANY, A VIRGINIA LIMITED PARTNERSHIP, BE DEFERRED TO A DATE CERTAIN OF MARCH 18, 2004.

ORDER OF THE AGENDA

February 18, 2004

Commissioner Hall seconded the motion which carried unanimously with Commissioners Alcorn and Harsel absent from the meeting.

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ORDER OF THE AGENDA

In the absence of Secretary Harsel, Chairman Murphy set the following order for the agenda items:

1. PCA 1998-SU-040-02 WEGMANS FOOD MARKETS, INC.
2. ZONING ORDINANCE AMENDMENT (Buildable Lots)
SUBDIVISION ORDINANCE AMENDMENT (Buildable Lots)

This order was accepted without objection.

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The first case was in the Springfield District, therefore, Chairman Murphy asked Vice Chairman Byers to assume the Chair.

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PCA 1998-SU-040-02 - WEGMANS FOOD MARKETS, INC. - Appl. to amend the proffers for RZ 1998-SU-040 previously approved for commercial development to permit a waiver of certain sign regulations. Located in the N.E. quadrant of the intersection of Lee Hwy. and Monument Dr. on approx 12.08 ac. of land zoned C-6. Comp. Plan Rec: Fairfax Center Area-office/mixed use. Tax Map 56-2 ((1)) 70A. SULLY DISTRICT. PUBLIC HEARING.

Susan Yantis, with Walsh, Colucci, Emrich, Lubeley, and Terpak, representative for the applicant, reaffirmed the affidavit dated January 28, 2004.

Commissioner Hart disclosed that his law firm, Hart and Horan, PC, had one case pending with the law firm of Walsh, Colucci, Lubeley, Emrich and Terpak, P.C., listed on the affidavit as an agent of the applicant, but that the matter was unrelated to this application, there was no financial relationship, and it would not preclude his participation in this case.

Commissioner Murphy asked that Vice Chairman Byers ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived and the public hearing closed. No objections were expressed, therefore, Vice Chairman Byers closed the public hearing and recognized Commissioner Murphy for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Murphy MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE PCA 1998-SU-040-2, SUBJECT TO THE EXECUTION OF THE PROFFERS CONSISTENT WITH THOSE FOUND IN APPENDIX 1 OF THE STAFF REPORT AND ALSO APPROVE A WAIVER OF THE SIGN REGULATIONS, PURSUANT TO SECTION 9-620 OF THE ZONING ORDINANCE.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Alcorn and Harsel absent from the meeting.

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At the conclusion of this case, Chairman Murphy resumed the Chair.

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ZONING ORDINANCE AMENDMENT (BUILDABLE LOTS) – To amend Chapter 112 as follows: Allows the issuance of Building Permits on certain lots that did not meet the zoning district requirements for minimum district size, lot area or lot width at the time of lot recordation, provided that the lot: (1) is described or depicted in a recorded metes and bounds description or unapproved subdivision plat prior to March 25, 2003; (2) is taxed as a separate parcel and depicted on the Fairfax County Property Identification Maps as a separate parcel on or before March 25, 2003; (3) contained an occupied principal structure on the effective date of this amendment that was occupied on that date or had been occupied within five years prior to the effective date of the amendment, or was under construction pursuant to a Building Permit and a Residential or Non-Residential Use Permit is issued within 12 months of the effective date of the amendment; and (4) otherwise meets all applicable Zoning Ordinance regulations including maximum building height, minimum yard requirements, maximum floor area ratio and permitted use regulations.

SUBDIVISION ORDINANCE AMENDMENT – To amend Chapter 101 as follows: Allows the validation of a lot created by the recordation among the Fairfax County land records of a metes and bounds description or an unapproved plat prior to September 1, 1947, provided that such lot met all applicable provisions of the Zoning Ordinance in effect when the lot was recorded or at some time thereafter, or meets the provisions of Sect. 2-405 of the Zoning Ordinance, and designates lots not meeting this requirement as outlots. Allows the validation of a lot created by the recordation among the Fairfax County land records of a metes and bounds description or an unapproved plat after August 31, 1947, provided that (1) such lot met all applicable provisions of the Zoning Ordinance in effect when the lot was recorded or at some time thereafter, or meets the provisions of Sect. 2-405 of the Zoning Ordinance, (2) the parcel is shown on the County's real

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property identification map as a separate parcel on or after March 25, 2003, and (3) the parcel has been taxed as a separate parcel on or after March 25, 2003, (4) for a parcel created after March 25, 2003, it has been more than 2 years since the recordation of a metes and bounds description or unapproved plat that purported to create the parcel. Lots recorded after August 31, 1947 that do not meet the previously listed 4 criteria are designated as outlots.

Donna Pesto, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the amendments.

John Friedman, Department of Public Works and Environmental Services (DPWES), explained that the proposed Subdivision Ordinance amendments were complementary to the Zoning Ordinance amendments. He said the proposed Zoning Ordinance amendment would allow the issuance of building permits for lots with occupied dwelling units or other principal structures. He stated the purpose of the proposed Subdivision Ordinance amendment was to provide validation that the lots would meet the proposed requirements of the new Zoning Ordinance. He stated that a proposed amendment to Code Section 101-1-12 would provide for validation of lots created prior to September 1, 1947 that met Zoning Ordinance requirements in effect at the time the lots were created or any time thereafter. He said the current requirements allowed for validation of lots meeting the Zoning Ordinance requirements that were in effect at the time of recordation or in effect on March 23, 2003, which was the date of adoption for the existing provisions. Mr. Friedman stated a proposed amendment to Section 101-1-14 would allow lots that had been created after August 31, 1947, and lots that could not be validated as buildable lots, to be designated as outlots and could then be legally sold or conveyed under the Subdivision Ordinance.

Commissioner Wilson noted the proposed language of the amendments still needed additional work and a decision would not be made until tomorrow night, Thursday, February 19, 2004.

In response to questions from Commissioner Hart, William Shoup, ZAD, Director, DPZ, stated he was not sure what the record retention requirements were, but noted that DPWES issued building permits and retained them for a certain number of years. He explained that ZAD maintained "street files" and copies of the building permits were kept indefinitely.

In responding to a question from Commissioner Hart, John Foster, Assistant County Attorney, indicated that if the proposed five year limit was increased to seven years or higher, it would exceed the scope of advertising and eliminating or reducing that criteria would allow a lot that was currently illegal to become validated.

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Commissioner Hart commented that a five year limit seemed unfair to the homeowners, who had been paying taxes for years, to determine their lots were unbuildable if the house had been unoccupied for five years.

Answering questions from Commissioner Wilson, Mr. Foster stated the advertising criteria was very specific and for a lot to qualify for validation it would have to satisfy all the criteria in the proposed amendment. He explained that if the criteria was reduced, it would be outside the scope of the advertisement.

In response to Commissioner Wilson's comments about advertising, Mr. Foster stated that there were two recommendations, in front of them, the first of which was the Ordinance that the staff had drafted, and the second was proposed additional language. He emphasized that if the Planning Commission approved the second recommendation it would be outside the scope of the current advertisement, but the process could begin again on that particular recommendation.

Chairman Murphy commented that there should be some latitude and not an all or nothing choice regarding the criteria. He said if changes in the language of the advertisement were made, it would deprive the citizens of the right to testify on those changes because it would not be part of the advertisement.

Responding to Commissioner Wilson's comments, Ms. Pesto agreed that the language in Paragraph 2 of the proposed amendment could be interpreted in different ways. She said if a lot did not meet the requirements of the Zoning Ordinance in effect at the time of recordation, the lot could be used for any use permitted in the zoning district pursuant to a building permit. She added, however, that it did not mean that proof of a building permit would be necessary for an existing structure.

Commissioner Wilson commented the language in the introduction of Paragraph 2, along with the rest of the conditions, stated a lot could not be used unless all conditions were met and one of those conditions was that the lot had to have a building on it. She said there was a problem with that condition because if a structure was built before building permits were required, or if the County had not kept the building permit record, then the homeowner could not prove that the house was built with a building permit.

There were no listed speakers, therefore, Chairman Murphy called for speakers from the audience and recited the rules for testimony.

Mary Theresa Flynn, Esquire, with Hunton and Williams, representing Jubilee, Pearson and Thompson and the heirs of Mary Brown, expressed support for the proposed amendments. She stated that when she was employed with Fairfax County many building permits were destroyed because the State Archivist threw away many historical pieces of paper including permits that would have helped many landowners affected by these proposed Ordinances.

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There were no other speakers. The Commission had no further comments or questions and staff had no closing remarks, therefore, Chairman Murphy closed the public hearing and recognized Commissioner Wilson for action on this application. (A verbatim excerpt is in the date file.)

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Commissioner Wilson MOVED THAT THE PLANNING COMMISSION DEFER ITS DECISION ONLY ON THE PROPOSED ZONING ORDINANCE AMENDMENT ON PERMITTED REDUCTIONS AND LOT SIZE FOR CERTAIN LOTS, I.E., BUILDABLE LOTS, AND THE PROPOSED COUNTY CODE AMENDMENT, CHAPTER 101 OF THE SUBDIVISION ORDINANCE, ON VALIDATION OF CERTAIN LOTS RECORDED BY MEETS AND BOUNDS ON AN APPROVED PLAT, UNTIL A DATE CERTAIN OF FEBRUARY 19, 2004.

Commissioner Byers seconded the motion which carried unanimously with Commissioners Alcorn and Harsel absent from the meeting.

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The meeting was adjourned at 9:18 p.m.
Peter Murphy, Chairman
Suzanne F. Harsel, Secretary

For a verbatim record of this meeting, reference may be made to the audio and video recordings which may be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Heidi Baggett

Approved on:

Karen M. Everett, Clerk to the
Fairfax County Planning Commission